IN THE SUPREME COURT OF FLORIDA

IN RE AMENDMENTS TO RULES OF)
THE SUPREME COURT RELATING)
TO ADMISSIONS TO THE BAR) No. 96,869
_____)

JOINT STATEMENT OF LAW SCHOOL DEANS RECOMMENDING THAT THE COURT DEFER CONSIDERATION OF THE PROPOSAL OF THE BOARD OF BAR EXAMINERS UNTIL THE BOARD CONDUCTS APPROPRIATE STUDIES

INTRODUCTION

In the past decade, the Florida Bar and the Florida law schools have made great strides in our ongoing efforts to increase diversity within the profession. Minority enrollment in Florida law schools has risen steadily, offering the promise of a bar as diverse as the state whose people it serves. We have some distance still to travel; the Florida Bar's 1998 survey reports that 91% of Florida lawyers are non-Hispanic whites, while 1998 census data reflects that only 68.6% of Floridians are non-Hispanic white. Sadly, the Board of Bar Examiners proposes to curtail bar admissions just as increased numbers of minority students approach graduation.

We wish to be clear: Had the Bar Examiners presented evidence that the current passing score has led to the admission of incompetent lawyers, we would join in support of their petition. The practice of law is a profession, and as much as anyone,

we understand our solemn obligation to ensure that the public is well served by competent lawyers. But the Board has failed to present a shred of evidence to suggest that the current passing score admits incompetent lawyers. Though the Board grudgingly concedes that the petition may disproportionately impact minority applicants, it conceals its dramatic consequences for African-American students by lumping them together with all other minority applicants, disregarding a history of racial subjugation we surely need not recount. Conceding that the effect may be substantial, the Board proposes to shoot first and ask questions later, raising the score before studying its consequences. We offer a glimpse of those consequences: a bar that will be even less diverse than today's bar, and far less diverse than the Florida it serves today.

The Bar Examiners present no data suggesting that any recently admitted lawyer with a passing score below 136 is incompetent to practice law or poses a danger to the public. The Bar Examination has been a constant hurdle for admission to practice since the passing score was last set; its scoring system adjusts for variations in questions and is not subject to either grade inflation or curved grading. Stephen Klein, *Options for Combining MBE and Essay Scores*, Bar Examiner, Nov. 1995, at 38 ("As a result of [scaling], a given MBE 'equated' or 'scale' score indicates the same level of mastery regardless of the particular administration of the exam on which that score was earned."); *see generally Multistate Bar Examination Technical Manual*.

Accordingly, a lawyer admitted today with a score of 131 is just as qualified as the lawyers who scored 131 a decade ago, and the Board makes no argument that those lawyers were incompetent.

Rather than conduct a study of lawyer competence, the Board retained the services of Stephen Klein. Klein reviewed the current passing score, and after conducting a brief study, prepared a report, the "Klein Report," recommending that the passing score be raised. The Klein Report is the only evidence the Bar Examiners offer to justify increasing the passing score. The Klein Report is deeply flawed. It employs unsound methods at odds with the established standards of two professions, psychology and law, and with the sworn testimony of its author. A team of researchers at Ohio State University and Harvard document the shortcomings in the forthcoming article, Deborah J. Merritt, Lowell L. Hargens & Barbara F. Reskin, *Raising the Bar: A Preliminary Critique of Recent Increases to Passing Scores on the Bar Exam* (forthcoming 2000) (prepublication draft attached).

Klein is an interested advocate. He has argued for increased bar passing scores. He has prepared commissioned reports in at least three other states to justify raising passing scores without evidence of need, including, most recently, Ohio and Minnesota. Responding to criticism that his recommendations disproportionately exclude minority bar candidates, Klein has argued that minority students fail the bar exam because they prepare poorly. His report is deeply flawed, employing methods

he rejects in sworn testimony and in his past publications.

The Bar Examiners have come to the Court prematurely. The Board has a wealth of data it has chosen to ignore: The Board knows the bar examination score of every lawyer admitted to practice in Florida. The Board should study that data. It should ask whether the lawyers who in the past decade have been admitted with scores of 131, 133, or 135 are less competent practitioners than their colleagues admitted with passing scores of 136 or 138.

Before making any recommendation, the Board should determine the consequences of its proposal for minority candidates, and particularly for African-American candidates. The Board should conduct a two-year study in which it identifies the racial and ethnic ancestry of every candidate. It should determine what percentage, respectively, of African-American, Cuban-American, other minority, and white applicants pass under the current standard of 131, and what percentages would have passed under proposed higher standards. Until the Board returns with the results of these proposed studies, the Court cannot assess either the need for or the consequences of the Board's petition. Accordingly, we urge the Court to defer ruling on the petition pending completion of the proposed studies.

I THE BOARD'S PROPOSED RULE WILL SUBSTANTIALLY CURTAIL MINORITY BAR ADMISSIONS, FALLING MOST HEAVILY UPON AFRICAN-AMERICAN BAR CANDIDATES

A. The Missing Data

The Board acknowledges that minority candidates already fail the bar examination at a higher rate than non-minority candidates, but offers no data respecting examination results by race. The Board has collected race specific data in past studies of bar examination results, and the data is startling: Past Florida results for first- time takers show the passing rate for white applicants to be *at least 30 percentage points higher than for African-American applicants*. Ken Myers, *Studies Suggest That Minorities Still Lag in Admissions, Tests,* Nat'l L.J., Feb. 24, 1992, at 4. Klein reports a gap of *forty percentage points* in his published studies. Stephen Klein, *Disparities in Bar Exam Passing Rates Among Racial/Ethnic Groups: Their Size, Source and Implications*, 16 Thurgood Marshall L. Rev. 517, 518 (1991).

The first comprehensive national study of bar examination results confirms the 30 percentage point disparity. Linda Wightman, *LSAC National Longitudinal Bar Passage Study* (1998). The Law School Admission Council conducted a longitudinal survey of the more than 27,000 law students who enrolled in ABA accredited U.S. law schools in 1991, following almost 25,000 who graduated through their bar examinations. 91.9% of white candidates passed their first bar examination; 61.4% of African-American candidates passed, and 74.8% of Hispanic candidates passed. *Id.* at 27, Table 6.

Before asking the Court to act, the Board should submit current information:

It should conduct a two-year study recording the race, national origin, and gender of every candidate, and should report for each group the projected passing rate based upon scores actually obtained. As trustee for the public interest, the Court will then be able to assess the effect of any score increase upon the diversity of the Bar.

B. The Misrepresented Data Comparing Passing Rates

Anticipating our concern that raising the passing score will increase the relative disparity in pass rates, the Klein Report asserts that existing disparities will remain constant irrespective of the passing score.[1] Klein reports that the pass rate for minority candidates will lag by 12 percentage points whether the passing score remains 131 or rises, and that his proposal therefore will have no measurable effect on group disparities.[2] But Klein has asked the wrong question; he should have asked whether the ratio of passing rates will change. Klein knows the answer to that question: Increasing the passing score increases the ratio between the two passing rates and exacerbates existing racial disparities. By asking the wrong question, he has offered the wrong answer and has concealed the discriminatory effects of the proposed increase.

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[1]Klein Report, at 5.

[2]Klein letter to Kathryn E. Ressel of June 9, 1994, appended to the Minority Report filed by Noel G. Lawrence, dated Nov. 29, 1999.

There are two generally accepted measures of disparity in group test performance: The first is the *ratio of passing rates*; the ratio can be expressed as a fraction whose numerator is the passing rate for white applicants and whose denominator is the passing rate for minority applicants. The second measure is a mathematical analogue of the ratio employed by federal agencies charged with preventing discrimination; it is *the lower rate expressed as a percentage of the higher rate*. *See, e.g.* Section 4D, Uniform Guidelines on Employee Selection Procedures, Adverse Impact and the "Four-Fifths Rule" (1978), 43 Fed. Reg. 38291, 38297-298 (1978)[3]. The reason for comparing ratios of passing rates is rooted in basic mathematics: As the required passing score increases, the percentage of candidates who pass decreases; fixed percentage disparities in passing rates therefore produce increasingly greater relative disparities between groups as the required passing scores increase.

We illustrate the principle with a hypothetical table. Like Klein, we assume the passing rate for African-American candidates will lag the passing rate for white candidates by a constant rate at every passing score level; we use the 30 percentage point lag found in the LSAC national finding. Because the Bar Examiners have not collected Florida data, we begin with current national results and assume an

[3]The Department of Justice, the Department of Labor, the Civil Service Commission, and the Equal Employment Opportunity Commission all adopted the Guidelines; they are codified at 28 C.F.R. 50.14, 41 C.F.R. Part 60-3, 5 C.F.R. 300.103 (c) and 29 C.F.R. Part 1607.

increasingly higher passing score requirement. Columns A and B state the respective passing rates by race with an increasingly higher minimum passing score; Column C states the disparity using Klein's method, Column D states the ratio of the disparities, and Column E states the disparity calculated under the Uniform Guidelines:

A	B	C	D	E
White Passing Percentage	African-American Passing Percentage	Percentage Disparity By Race (A-B)	Ratio of Rates (A:B)	African-American Passing Rate Expressed As Percentage of White Passing Rate (B÷A, converted to percentage)
90%	60%	30%	3:2	66.7%
60%	30%	30%	2:1	50%
40%	10%	30%	4:1	25%
30%	0%	30%	∞	0%

Thus, for example, if the white passing percentage drops from 90% to 60% and the African-American passing percentage lags by a constant 30 percentage points, it will drop correspondingly from 60% to 30%. Although the lag remains a constant 30 percentage points, the ratio of the passing rates drops from 3:2 to 2:1, greatly increasing the racial disparity in bar admissions.

Passing percentages inexorably drop as the passing score increases. Thus, raising the passing score causes the ratio of passing rates to increases rapidly, causes the minority passing rate to drop steadily when expressed as a percentage of the white

passing rate. The inevitable consequence of raising the passing score is therefore a widening of the current disparity between white and African-American bar admission rates.

C. The Missing Minority Candidates

What becomes of candidates, particularly minority candidates, who fail the bar examination? Conventional wisdom is that those candidates retake the exam and after repeated attempts, eventually pass; the Klein Report assumes as much. But as is so often true, conventional wisdom is wrong. Drawing from her LSAC study, Wightman reports:

> Nearly 11 percent of the black examinees in this study group failed the first attempt at the bar and never attempted it again. *They represent nearly half of those in the failed category*.

Linda F. Wightman, *Through a Different Lens: A Reply to Stephan Thernstrom*, 15 Const. Commentary 45, 55 (1998). Five percent of Hispanic candidates fail the exam the first time and never repeat it; by contrast, barely 2 percent of white candidates fail the first time and never attempt the exam again. Wightman, *LSAC National Longitudinal Bar Passage Study*, at 56. The reasons why so many African-American candidates do not retake the bar examination are obvious.

Students who fail the bar exam generally are unemployable as lawyers. Because failed candidates are forbidden from practicing law, law firms have no interest in hiring or continuing to subsidize their efforts. Those who fail must support themselves and their families, and still must begin repayment of student loans. In order to devote time to additional bar preparation, they must have sufficient financial resources to fund those efforts. Because of the wide racial disparity in the distribution of wealth, African-American candidates are much less likely to have those resources, and are therefore much less likely to be able to afford to continue taking the bar examination.

The Klein Report assumes that both white and minority candidates who will fail the first bar examination because of the proposed increase in the passing score and who will continue to take the examination will eventually pass.[4] But Klein does not account for the candidates who, for financial reasons, simply cannot afford to continue taking the bar exam, *and who therefore will stop trying*. The vast racial disparity in the distribution of wealth ensures that the bulk of those students are minority candidates. For the nearly half the African-American candidates who, because of the proposed increase, will fail their first attempt at the bar examination, the profession will not simply be a dream deferred, it will be a dream lost.

[4]Klein Report, at 4-5.

II THE KLEIN STUDY DESIGN IS UNRELIABLE

The Klein Study is so deeply unreliable and methodologically flawed that the Court should not rely upon it. We elaborate its flaws briefly before turning to its methodological bias.

A. Klein Study Participants Had No Criteria for Competence or Passing

The Bar Examination serves a single purpose: It screens for incompetence. The Klein Report suggests the Court revise its established standard, but offers no evidence that the current standard has failed to achieve its purpose; moreover, it fails to identify any criteria by which to measure competence. Klein purported to assess minimum competence by asking two panels, one composed of readers, and one composed of lawyers, professors, and judges, to grade for "passing" without first establishing an agreed standard for minimum competence or passing.[5] Twenty-five years ago, the United States Supreme Court rejected a similar "I know it when I see it" attempt to measure competence offered to defend the racially discriminatory results of employment tests, stating:

There is no way of knowing precisely what criteria of job performance the

[5]Klein Report, at 2.

> supervisors were considering, whether each of the supervisors was considering the same criteria or whether, indeed, any of the supervisors actually applied a focused and stable body of criteria of any kind. *There is, in short, simply no way to determine whether the criteria actually considered were sufficiently related to the Company's legitimate interest in job-specific ability to justify a testing system with a racially discriminatory impact.*

Albemarle Paper Co. v. Moody, 422 U.S. 405, 433 (1975) (italics added).

Like the *Albemarle Paper* supervisors, the Klein panels were asked to perform a task they were not trained to perform. Klein offered his panels no guidance in how to set passing scores.[6] Moreover, the readers who grade Florida Bar Examination essays *do not set passing scores* for bar examination essays. Rather, they provide comparative evaluations of essay answers. The Board converts those comparative scores to a standard scale, combines them with Florida multiple choice scores, scales them to the Multistate Bar Examination score distribution, and employs the MBE passing score to set the passing scale on the Florida section. Klein's methodology turns the process upside down. He asked panels to set passing scores based upon a single essay, and then scaled the MBE scores to those results without any shared standard of minimum competence.

Professional competency standards can be modified through a rational process rather than through blind guesswork; *see, e.g.*, Allan S. Cohen, Michael T. Kane & Terence J. Crooks, *A Generalized Examinee Centered Method for Setting Standards on Achievement Tests*, 12 Applied Measurement in Education 343 (1999). A

[6]Klein Report, at 2.

generation ago, the United States Supreme Court insisted upon rational standards rather than guesswork when modified standards increased racial disparities; the Florida Supreme Court should accept no less today.

B. Klein's Sworn Testimony Rejects the Readers' Scoring Scale as Meaningless.

The Klein Report tries to compare unguided subjective assessment of passing exams to the numerical scores those essays previously were given when graded for the Bar Examination on a scale of 0-100 to determine a proposed new passing score.[7] Because the numerical score each essay previously was given became the basis for setting the new recommended passing score, it is essential to consider whether the scoring from 0-100 reliably differentiated among those essays. In sworn testimony provided to the Alaska Supreme Court defending a challenge to the grading of essays on the Alaska Bar Examination, Klein rejected as inherently unreliable the practice of grading essays on a scale from 0-100. Distinguishing essay grading from physical measurement, Klein testified by affidavit:

> Physical measurement is used to assess the height, weight, temperature, or other properties of physical things. These measurements are made with rulers, scales,

[7]Klein Report, at 2.

> thermometers, Geiger counters, and other mechanical devices. Such measurements can be made with more precision by using an instrument that is marked off in finer gradations, such as by replacing a ruler with a micrometer.
>
> In contrast, human judgment is needed to assess the relative quality of a figure skater's performance or a candidate's answer to a bar exam question. Using more score levels (such as by having readers assign grades in half-point intervals) does not increase precision unless readers can reliably distinguish between the quality of answers in adjacent levels. Readers should use only as many score levels as are truly needed to distinguish between answers of different quality."

In re Bettine, 840 P.2d 994, 996-97 (Alaska 1992). Klein testified that five score levels are generally appropriate for grading bar exam essay answers since "this is about the right number to reflect real differences in answer quality, but not so many as to force readers to make distinctions where there are no reliably identifiable differences." *Id*. at 997.

Klein's own testimony discredits his study. The Klein Report depends critically upon the relationship between two sets of data. The first, the essay grades of 0-100, "make distinctions where there are no reliably identifiable differences." *Id*. The second, the four-point scoring system employed by readers and panelists, has been held unreliable in *Albemarle Paper* and the Uniform Guidelines for lack of a shared definition of the minimum competence the passing score is intended to measure. It is axiomatic that a reliable conclusion cannot be drawn from unreliable data. Even more obviously, no reliable conclusion can be drawn from comparing unreliable data to unreliable data. The Klein Report fails to support increasing the passing score.

III THE KLEIN STUDY IGNORED KLEIN'S PUBLISHED RECOMMENDATIONS ON THE IMPORTANCE OF MAINTAINING GRADING STANDARDS

Essay exam graders must exercise vigilance to ensure the application of consistent standards throughout the grading process. In his publications, Klein argues that it is therefore "a good idea to establish 'benchmark' answers to help insure that readers maintain the same grading standards across all answers to the question regardless of whether they are read toward the beginning, middle or end of the grading process." Stephen Klein, *Options For Assigning Essay Scores*, 24 Bar Examiner 24, 27 (1996). Klein suggests a method for establishing benchmarks, yet failed to employ his own suggestions in the Florida study:

> The first step in establishing the benchmarks involves reading two randomly selected answers, deciding which one is best, reading a third answer and deciding where its quality fits relative to the first two, and so on until at least 25 randomly selected answers (i.e., not just the first 25 to be graded) are evaluated. Next the 25 answers are divided into piles – one pile for each of the possible score levels. One answer is selected from each pile to represent the typical quality in that pile.

Id. Disregarding his own advice, Klein simply instructed his panels to assign one of four possible scores to each exam from start to finish, creating the substantial risk that the standards a panelist created for the first few exams may have been quite different from the standards employed later.[8] Disturbing reports from several panelists suggest

[8]Klein Report, at 2.

that Klein compounded his oversight by instructing panelists that the Board of Bar Examiners had undertaken the study to support raising the passing score, and went so far in at least one instance as to instruct a panelist that she was grading too leniently. With no control over varying standards, and some evidence to suggest the deliberate biasing of the study, the study is unreliable.

IV THE KLEIN METHODOLOGY YIELDS AN INHERENTLY INFLATED PASSING SCORE

In their forthcoming article, Professors Merritt, Hargens, and Reskin demonstrate an even deeper flaw. The Klein methodology is not simply unreliable; its design *automatically* inflates the recommended passing score it generates. Shielded from the adversary process, this critical flaw in Klein's methodology has eluded detection. We explain it below, drawing heavily upon the work of Professors Merritt, Hargens, and Reskin. We append a prepublication draft of their paper to our comments.

A. The Florida Bar Examination

In one singularly accurate section, Klein describes the current compensatory

scoring system for the Florida Bar Examination.[9] The exam contains two parts, Part A and Part B. Part A tests Florida law and consists of three essay questions and three multiple choice sections, converted to give each of the six sections equal weight. Part B is the Multistate Bar Examination. The sum of the six converted scores in Part A is scaled to the same mean and standard deviation as the MBE, yielding *separate* scores for parts A and B.

An applicant can pass the Florida Bar Examination in either of two ways. The applicant can pass in a single sitting if the scores on Parts A and B average 131, and the applicant can pass in successive sittings by obtaining a score of 131 or greater on each part. *Neither method requires an applicant to obtain a "passing" score on an essay question, or a "passing" score on the sum of the three essay questions.* In short, there is no such thing as a passing essay on the Florida Bar Examination

We cannot overstate the significance of the compensatory scoring method. The Bar Examination tests hundreds of issues in an array of subjects, but only a handful of those issues appear within the *essay* examinations. The compensatory scoring method minimizes the risk that a poor essay is unrepresentative of a candidate's knowledge and ability, or that a poor essay score is an artifact of an inherently subjective scoring system. Thus, many candidates write one, two, or even three "failing" essay examinations, yet pass the bar examination in one sitting because their

[9]Klein Report, Florida's Procedures, at 1-2.

MBE and Florida multiple choice answers compensate for their poor essays. For all of these reasons, psychometric literature speaks with one voice, consistently recommending the use of compensatory scoring in qualification examinations. *See, e.g.*, Stephen Klein, *Options for Combining MBE and Essay Scores*, Bar Examiner, Nov. 1995, at 38. Heeding that advice, the Board of Bar Examiners employs the compensatory scoring method.

B. The Klein Study Flaw

The Klein study design completely ignores the compensatory scoring system. Klein panelists sampled and graded essays for a single question,[10] but on the Bar Examination, examinees are graded upon an entire examination. The Klein study assumes that the percentage of passing essays should equal the percentage of passing exams, and that the author of a single question marked "clear fail" or "marginal fail" *should fail the bar exam*. But that assumption is wrong; under the compensatory scoring system, candidates regularly write what Klein would call a failing essay and pass the Bar Examination, while others write what Klein would call a passing essay and fail the exam. In short, Klein collapses Parts A and B of the Bar Examination into a single essay question. As Professors Merritt, Hargens, and Reskin demonstrate, it

[10]Klein Report, Procedures for the Panelist Study, at 2-3.

is statistically unsound to estimate the percentage of passing exams from passing essays; the practice implicitly and erroneously assumes that applicants must achieve a passing score on every essay question on the exam and drives up the recommended passing score. Tables I and II of the appendix dramatically illustrate the Klein study flaw.

By failing to account for compensatory scoring, the Klein study operates like an invisible pump, inflating the passing score it generates. Florida rightly employs a compensatory scoring system, understanding that competent applicants sometimes fail individual essays; the Court should not rely on a study whose design assumes otherwise.

V THE KLEIN REPORT SELECTIVELY REPORTS AND DISPLAYS DATA TO SUPPORT ITS CONCLUSIONS

The Klein Report does not include the data from which it was drawn, limiting the opportunity to test its statistical conclusions. However, because of the substantial disagreement among and within panels over grading, the data it reports does not persuasively support its conclusions.

Table One of the Klein Report[11] suggests apparently dramatic agreement between the assessments of his 28 Florida attorney panelists and his 1999 exam

[11]Klein Report, at 3.

readers, but that agreement is largely an artifact of his methodology. The Board sought to determine whether to raise its passing score from its current level of 131. Nobody has suggested that the score be lowered to 120 or raised to 160. Nevertheless, Klein chose a single set of 40 answers divided equally from each 10 % (decile) of the score ranges, with quite predictable consequences. We would expect readers and panelists to agree that good essays should pass, that bad essays should fail, and that some disagreement would occur at the border between the two. That is exactly what happened: Readers and panelists presumably agreed that the four exams from the top 10% or decile should pass, that the four exams from the second 10% should pass, that the four exams from the third 10% should pass, and similarly, that the four exams from the bottom decile should fail. Agreement at those levels is inevitable, but the boundary between pass and fail does not occur at those levels. Rather, the boundary occurs within a range of only one or two deciles. The panels and the readers read only four exams from each of those deciles, and appear to have disagreed regularly concerning their classification. Table One of the Klein Report illustrates a well understood principle: Agreement at the extremes obfuscates disagreement at the margins.

We would not assume much from a comparison of the results of two teams of randomly chosen marksmen instructed to shoot at 40 targets: four large barns, four medium barns, four large houses, four small houses, with progressively smaller targets

shrinking to four thimbles and four pinheads. Results showing that everyone hit the barns and houses and missed the pinheads and thimbles would tell us nothing about their relative skill in shooting. But if all were given 40 standard targets, we could legitimately infer whether their shooting was comparable. A similarly reliable test of agreement between readers and examiners would also focus upon the range within which disagreement is likely, not the range in which agreement is inevitable.

The first essential step in Klein's study was his selection of raw passing scores from the essay questions he tested. He used the raw passing score to generate his passing rate for each question, and he used the passing rates for each question to generate a passing score for the exam. If the raw passing score is unreliable, then so too are all conclusions drawn from it. Panelist disagreement over raw passing scores forecloses any reliable conclusions over passing rates, and therefore over an appropriate passing score.

Table C.2 of the Klein Report[12] indicates the actual agreement rate between panelists and readers on whether each essay should pass or fail; despite the inclusion of the best and worst essays within the study, one panel disagreed 30% of the time, and on average panels disagreed almost 20% of the time. Discounting for the expected agreement on the best and the worst papers, the likelihood is great that the panelists and readers disagreed on the majority of the borderline papers, yet these are

[12]Klein Report, at 9.

the only papers critical to the choice of the raw passing score.

With the documented shortcomings in the Klein Report, the shaky relationships it reports provide no foundation for ruling on the Board's petition. The Board's petition threatens to dramatically curtail minority bar admissions. With no reliable evidence of need for prompt action, we respectfully urge the Court to direct the Board to defer further consideration of the petition pending completion by the Board of Bar Examiners of two studies:

1) The Board should prepare a study evaluating whether lawyers recently admitted with Bar Examination scores of 131-136 disproportionately are incompetent, using existing data on bar examination scores for recent examinees, disciplinary records of the Florida Bar, and other appropriate data.

2) The Board should conduct a two year study to identify the percentage within each minority group and among white examinees who obtain a score of 131 or higher, 133 or higher, and 136 or higher.

With the results of those studies, the Court can answer with confidence the two critical questions which should inform its judgment: Will increasing the passing score protect the public from the admission of incompetent lawyers, and will increasing the

passing score retard efforts to diversify the Florida Bar?

CONCLUSION

For the foregoing reasons, we respectfully request the Court to defer ruling on the petition pending completion of further studies.